



The Word and the Internet

Law

Internet defamation is one of the great banes of modern life. But if there is anything left to the law of defamation in our time — and after decades of judicial winnowing, there is little — the legal system has virtually no remedy even for unlawful virtual speech.

To set up shop in the marketplace of expression all that's ever been needed is a soapbox. To be heard beyond earshot, however, one used to need a printing press. But presses were scarce, making publishing expensive and thus anyone contemplating whether to publish had to weigh the consequences of doing so, including the potential for legal liability.

Defamation is defined as a false statement purporting to be factual that caused harm, or that even seriously offended one's reputation or dignity. Legal recourse could include an injunction silencing unlawful speech or the payment of damages to its victim.

But no damages are paid by someone who can't be identified. And there has always been anonymous libel, or defamation against groups who could not sue as a unit. Works such as the *Protocols of the Elders of Zion* did great harm, but such "elaborate forgeries" were the exception. More typically, cranks unworthy of being taken seriously peddled their wares on purple-smudged broadsides distributed by hand or pinned up on telephone poles. Once pulled down and crumpled up, they were gone and did little lasting harm.

Today, however, it is precisely what people say over the Internet, our modern-day "ether," that causes so much fear — more than what is written in those old-fashioned things called books and newspapers. The Internet has given people unprecedented power to build fortunes, topple governments, come together or tear each other apart without ever identifying themselves. There is no cost to publish; there is little accountability; little is forgotten. Yet courts have been more protective of anonymity on

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and reporting, they are showing an increasing willingness to allow the legal system to unmask expression unworthy of protection.

A cliché used by civil libertarians is that the best antidote to "bad" speech is more speech. But certain falsehoods, once published, cause harm that can never be undone. Still, in the Internet era, a frontal legal attack on defamation usually exacerbates the problem. Upon news of a threatened lawsuit for defamation, bloggers or others sympathetic either to the defamer or to a vague and uninformed concept of "free speech" delight in repeating the falsehood in question, mocking lawyer and victim alike. And, indeed, sometimes this boomerang effect is justified; well-heeled bullies who once silenced critics with legal threats now come to regret legal saber rattling very quickly.

As hard as it is to implement in practice, the best legal strategy for "bad" speech in an environment where consequences are few and the law stands on uncertain footing is almost always this: the less said about the defamatory comments, the better. Nothing kills an unworthy rumor like neglect. And nothing gives it new life like a juicy lawsuit that's the talk of cyberspace. ●

this medium than any other, leaving victims of Internet defamation with few legal remedies.

There are, in fact, techniques not involving the legal system to identify or narrow down information about people who "speak" on the Internet. Sustained activity by anonymous speakers often results, over time, in their identities being revealed. And while good judges are properly suspicious of parties who would use the courts to silence legally protected commentary, opinion,